

ANN MILLER RAVEL, County Counsel (S.B. #62139)
MIGUEL MARQUEZ, Assistant County Counsel (S.B. #184621)
TAMARA LANGE, Lead Deputy County Counsel (S.B. #177949)
OFFICE OF THE COUNTY COUNSEL
70 West Hedding Street, East Wing, Ninth Floor
San Jose, California 95110-1770
Telephone: (408) 299-5900
Facsimile: (408) 292-7240

Attorneys for Defendants
COUNTY OF SANTA CLARA and SANTA
CLARA COUNTY PUBLIC HEALTH
DEPARTMENT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

CALIFORNIA RESTAURANT
ASSOCIATION,

Plaintiff,

v.

THE CITY AND COUNTY OF SAN
FRANCISCO and THE SAN
FRANCISCO DEPARTMENT OF
PUBLIC HEALTH,

Defendants.

No. CV-08-3247CW

CALIFORNIA RESTAURANT
ASSOCIATION,

Plaintiff,

v.

THE COUNTY OF SANTA CLARA
and THE SANTA CLARA COUNTY
PUBLIC HEALTH DEPARTMENT,

Defendants.

No. C08-03685 RS

**ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES SHOULD
BE RELATED**

///

Pursuant to Civil L.R. 3-12 and 7-11, Defendants COUNTY OF SANTA CLARA and SANTA CLARA COUNTY PUBLIC HEALTH DEPARTMENT respectfully move this Court to consider whether Case No. C08-03685 RS should be related to Case No. CV-08-3247CW, now pending before this Court. Defendants the County of Santa Clara, the Santa Clara County Public Health Department, the City and County of San Francisco, and the San Francisco Department of Public Health agree that relating the two cases is proper. However, Defendants have been unable to reach a stipulation with the California Restaurant Association regarding relation of the cases, as is explained more fully in the attached Declaration of Tamara Lange.

In each action, Plaintiff California Restaurant Association challenges the validity of a local ordinance requiring chain restaurants to disclose to consumers the number of calories contained in foods posted on menu boards or food tags and to provide more detailed information about calories, saturated fat, trans fat, carbohydrates and sodium on menus. Although the ordinances differ in some technical respects, they are essentially the same in substance. Accordingly, the two cases concern “substantially the same parties, property, transaction or event.” Civil L.R. 3-12(a).

In each case, Plaintiff contends that the local ordinance at issue is preempted by the Nutrition Labeling and Education Act of 1990, 21 U.S.C. §§ 301 *et seq.* and by the California Retail Food Code, Cal. Health & Safety Code § 113703 *et seq.* Plaintiff also contends that the ordinances are unconstitutional under the First Amendment of the United States Constitution and Article 1, Section 2 of the California Constitution. Accordingly, “[i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” Civil L.R. 3-12(b).

In addition, transfer of this action to the Oakland Division is proper under Civil L.R. 3-2(f), which authorizes transfer, subject to the provisions of the Court’s Assignment Plan, when the convenience of parties and witnesses and the interests of justice will be served by

///

///

///

1 transferring the action to a different division within the district. That standard is satisfied here
2 because conservation of judicial resources advances the interest of justice.

3 Dated: August 5, 2008

Respectfully submitted,

4 ANN MILLER RAVEL
County Counsel

6 By:


7 TAMARA LANGE
Lead Deputy County Counsel

8 Attorneys for Defendants
9 COUNTY OF SANTA CLARA and
10 SANTA CLARA COUNTY PUBLIC
11 HEALTH DEPARTMENT
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28